

EXHIBIT

INTRODUCTION

Respondent David Rosenaur was the proponent of Measure F, a measure on the Town of Loomis ballot in the November 3, 1998 general election. Respondent Export International, Inc. (the “Corporation”) is a California corporation wholly owned by Respondent Rosenaur.

Respondents jointly owned a 64-acre parcel of land located in the Town of Loomis, known as Loomis Acres and/or Turtle Island. Measure F proposed to allow the re-zoning of the Turtle Island land for commercial development. The measure failed to win approval.

During the 1998 calendar year, Respondents made independent expenditures of approximately \$133,599.07 in support of Measure F, and thereby qualified as an “independent expenditure committee” under the Political Reform Act (the “Act”)¹. As an independent expenditure committee, Respondents were required by the campaign reporting provisions of the Act to file campaign statements and reports disclosing the expenditures that they made. In this matter, Respondents failed to file those campaign statements and reports in a timely manner.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

- Count 1:** Respondents David Rosenaur and Export International, Inc. failed to file a pre-election campaign statement for the reporting period July 1, 1998 through September 30, 1998, by the October 5, 1998 due date, in violation of section 84200.5, subdivision (f) of the Government Code.
- Count 2:** Respondents David Rosenaur and Export International, Inc. failed to file a supplemental independent expenditure report, disclosing approximately \$21,333.95 in independent expenditures made in support of Measure F during the reporting period July 1, 1998 through September 30, 1998, by the October 5, 1998 due date, in violation of section 84203.5 of the Government Code.
- Count 3:** Respondents David Rosenaur and Export International, Inc. failed to file a pre-election campaign statement for the reporting period October 1, 1998 through October 18, 1998, by the October 22, 1998 due date, in violation of section 84200.5, subdivision (f) of the Government Code.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

- Count 4:** Respondents David Rosenaur and Export International, Inc. failed to file a supplemental independent expenditure report, disclosing approximately \$35,151.62 in independent expenditures made in support of Measure F during the reporting period October 1, 1998 through October 18, 1998, by the October 22, 1998 due date, in violation of section 84203.5 of the Government Code.
- Count 5:** Respondents David Rosenaur and Export International, Inc. failed to file a late independent expenditure report, disclosing approximately \$6,056.20 in late independent expenditures made on or about October 20, 1998 in support of Measure F, by the October 21, 1998 due date, in violation of section 84204, subdivision (a) of the Government Code.
- Count 6:** Respondents David Rosenaur and Export International, Inc. failed to file a late independent expenditure report, disclosing approximately \$1,005.91 in late independent expenditures made on or about October 30, 1998 in support of Measure F, by the October 31, 1998 due date, in violation of section 84204, subdivision (a) of the Government Code.
- Count 7:** Respondents David Rosenaur and Export International, Inc. failed to file a semi-annual campaign statement for the reporting period October 18, 1998 to December 31, 1998 by the January 31, 1999 due date, in violation of section 84200, subdivision (b) of the Government Code.
- Count 8:** Respondents David Rosenaur and Export International, Inc. failed to file a supplemental independent expenditure report, disclosing approximately \$9,673.62 in independent expenditures made in support of Measure F during the reporting period October 18, 1998 through December 31, 1998, by the January 31, 1999 due date, in violation of section 84203.5 of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Independent Expenditure Committee

Section 82031 defines an “independent expenditure” as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to, or at the behest of, the affected candidate or committee.

Section 82013, subdivision (b) defines a “committee” as any person or combination of persons who directly or indirectly makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year. This type of committee is commonly referred to as an “independent expenditure” committee.

Section 82027.5, subdivision (d) provides that a “city general purpose committee” includes all independent expenditure committees pursuant to Section 82013, subdivision (b), that support or oppose a measure being voted on in only one city.

Duty to File Late Independent Expenditure Reports

Section 82036.5 defines a “late independent expenditure” as any independent expenditure which totals in the aggregate one thousand dollars (\$1,000) or more, and is made for or against any specific measure involved in an election, before the date of the election but after the closing date of the last campaign statement required to be filed prior to the election by a committee participating in the election.

Under Section 84204, subdivision (a), a committee that makes a late independent expenditure is required to report the late independent expenditure by facsimile transmission, telegram, guaranteed overnight mail through the U.S. Postal Service, or personal delivery within 24 hours of the time the expenditure is made.

Duty to File Pre-Election Campaign Statements

Section 84200.5, subdivision (f) requires a city general purpose committee in a city which has an election on the first Tuesday after the first Monday in November of an even numbered year to file a pre-election statement for the six month period in which the city election is held, if the committee makes independent expenditures totaling \$500 or more during the period covered by the pre-election statement.

Section 84200.7, subdivision (b) sets forth the pre-election filing schedule for elections held in November in an even numbered year. According to this filing schedule, a committee is required to file the first pre-election statement no later than October 5, for the reporting period ending September 30, and the second pre-election statement no later than 12 days before the election, for the reporting period ending 17 days before the election.

Duty to File Supplemental Independent Expenditure Reports

Under Section 84203.5, subdivision (a), as it was in effect between October 1998 and January 1999, a committee that makes independent expenditures of five hundred dollars (\$500)² or more to support or oppose a measure or the qualification of a measure is required to file an independent expenditure report at the same time and in the same places where the committee on whose behalf the independent expenditure was made would be required to file, as if it were formed or existing primarily to support or oppose a measure, or the qualification of a measure. These “supplemental independent expenditure reports” must be filed in addition to other campaign statements, such as pre-election and semi-annual statements for the same reporting period, that are required to be filed.

Duty to File Semi-Annual Campaign Statements

Section 84200, subdivision (b) requires an independent expenditure committee to file a semi-annual campaign statement, if the committee has made independent expenditures during the six-month period before the closing date of the statement. The first semi-annual campaign statement covers the reporting period January 1 to June 30, and must be filed by July 31. The second semi-annual campaign statement covers the reporting period July 1 to December 31, and must be filed by January 31 of the following year.

SUMMARY OF THE FACTS

Respondent David Rosenaur was the proponent of Measure F, a measure on the Town of Loomis ballot in the November 3, 1998 general election. Respondent Export International, Inc, is a California corporation wholly owned by Respondent Rosenaur.

Respondent Rosenaur and his wholly owned corporation, Respondent Corporation jointly owned a 64-acre parcel of land, known as Loomis Acres and/or Turtle Island, located in Loomis adjacent to Interstate 80, and zoned agricultural. Because of the close proximity to Interstate 80, Respondent Rosenaur wanted to develop a commercial shopping center on the parcel. Respondent Rosenaur was unsuccessful in his attempts to get the Loomis Planning Commission and the Loomis Town Council to rezone the land for commercial use, and as a result, he decided to place the rezoning issue before the voters of Loomis as a ballot measure. Measure F, a ballot measure which proposed the rezoning of Respondents’ 64-acre parcel of land from agricultural to commercial, qualified for the ballot on February 25, 1998.

During the reporting period January 1, 1998 through March 31, 1998, Respondents made approximately \$44,941.04 in independent expenditures to support the passage of Measure F, and therefore qualified as an “independent expenditure committee” under the Act.

Respondent Rosenaur conducted his campaign activity under the committee name Loomis Citizens Committee for Measure F. Respondent Rosenaur hired McNally Temple & Associates, Inc, a political consulting firm, to provide campaign consulting services to support

² Section 84203.5 was amended in 2000, effective January 1, 2001, raising the threshold from \$500 to \$1,000. Because the violations in this case occurred in 1998, the \$500 threshold is applicable.

the passage of Measure F. Pursuant to his agreement with that firm, McNally Temple arranged newspaper advertising, produced a video advertisement, and developed a mass mailing brochure, among other campaign activities, under the committee name, "Loomis Citizens for Measure F." In addition, Respondent Rosenaur also employed a campaign manager and campaign workers to send out campaign literature under the "Loomis Citizens for Measure F" committee name.

Respondent Rosenaur conducted his campaign for Measure F under the committee name "Loomis Citizens Committee for Measure F", yet filed his campaign statements under his own name. While Respondent Rosenaur was not prohibited from doing this under the provisions of the Act, he was required to properly and timely disclose his campaign activities according to the rules applicable to independent expenditure committees.

In this matter, Respondents failed to comply with those requirements as set forth below.

Count 1: Respondents David Rosenaur and Export International, Inc. failed to file a pre-election campaign statement for the reporting period July 1, 1998 through September 30, 1998, by the October 5, 1998 due date, in violation of Section 84200.5, subdivision (f).

As an independent expenditure committee that supported a measure being voted on in only one city, Respondents were required, under Sections 84200.5, subdivision (f), and 84200.7, subdivision (b), to file a pre-election campaign statement by October 5, 1998, for the reporting period ending September 30, 1998, if Respondents made independent expenditures of \$500 or more during the reporting period.

Respondents filed a pre-election campaign statement for the reporting period July 1, 1998 through September 30, 1998, on October 28, 1998, disclosing the independent expenditures that they made, totaling \$21,333.95, during the period covered by the statement.

By failing to file a first pre-election campaign statement for the July 1, 1998 through September 30, 1998 reporting period by the October 5, 1998 due date, Respondents violated Section 84200.5, subdivision (f).

Count 2: Respondents David Rosenaur and Export International, Inc. failed to file a supplemental independent expenditure report, disclosing approximately \$21,333.95 in independent expenditures made in support of Measure F during the reporting period July 1, 1998 through September 30, 1998, by the October 5, 1998 due date, in violation of Section 84203.5.

As an independent expenditure committee that supported a measure being voted on in only one city, Respondents were required, under Section 84203.5, to file a supplemental independent expenditure report at the same time and place that it would be required to file a first pre-election campaign statement, if Respondents made independent expenditures of \$500 or more during the reporting period. The deadline to file the first pre-election statement, for the reporting period July 1, 1998 through September 30, 1998, was October 5, 1998.

Respondents filed a supplemental independent expenditure report for the reporting period July 1, 1998 through September 30, 1998, on October 28, 1998, disclosing the

independent expenditures they made, totaling \$21,333.95, during the period covered by the statement.

By failing to file a supplemental independent expenditure report for the July 1, 1998 through September 30, 1998 reporting period by the October 5, 1998 due date, Respondents violated Section 84203.5.

Count 3: Respondents David Rosenaur and Export International, Inc. failed to file a pre-election campaign statement for the reporting period October 1, 1998 through October 18, 1998, by the October 22, 1998 due date, in violation of Section 84200.5, subdivision (f).

As an independent expenditure committee that supported a measure being voted on in only one city, Respondents were required, under Sections 84200.5, subdivision (f), and 84200, subdivision (b), to file a pre-election campaign statement by October 22, 1998, for the reporting period ending 17 days before the November 3, 1998 election, if Respondents made independent expenditures of \$500 or more during the reporting period.

Respondents filed a pre-election campaign statement for the reporting period October 1, 1998 through October 17, 1998, on October 29, 1998, disclosing the independent expenditures they made, totaling \$35,151.62, during the period covered by the statement.

By failing to file a second pre-election campaign statement for the October 1, 1998 through October 17, 1998 reporting period by the October 22, 1998 due date, Respondents violated Section 84200.5, subdivision (f).

Count 4: Respondents David Rosenaur and Export International, Inc. failed to file a supplemental independent expenditure report, disclosing approximately \$35,151.62 in independent expenditures made in support of Measure F during the reporting period October 1, 1998 through October 18, 1998, by the October 22, 1998 due date, in violation of Section 84203.5.

As an independent expenditure committee that supported a measure being voted on in only one city, Respondents were required, under Section 84203.5, to file a supplemental independent expenditure report at the same time and place that it would be required to file a second pre-election campaign statement, if Respondents made independent expenditures of \$500 or more during the reporting period. The deadline to file the second pre-election statement, for the reporting period October 1, 1998 through October 17, 1998, was October 22, 1998.

Respondents filed a supplemental independent expenditure report for the reporting period October 1, 1998 through October 17, 1998, on October 29, 1998, disclosing independent expenditures they made, totaling \$35,151.62, during the period covered by the statement.

By failing to timely file a supplemental independent expenditure report for the October 1, 1998 through October 17, 1998 reporting period by the October 22, 1998 due date, Respondents violated Section 84203.5.

Count 5: Respondents David Rosenaur and Export International, Inc. failed to file a late independent expenditure report, disclosing approximately \$6,056.20 in late independent expenditures made on or about October 20, 1998 in support of Measure F, by the October 21, 1998 due date, in violation of Section 84204, subdivision (a).

Under Section 84204, subdivision (a), Respondents were required to file a late independent expenditure report within 24 hours of making an independent expenditure in the amount of \$1,000 or more during the late reporting period. The late reporting period for the November 3, 1998 general election was October 18, 1998 through November 2, 1998.

Respondents made payments to various vendors for the design, production, and distribution of video tapes supporting Measure F. On October 20, 1998, Respondents made a \$1,000 payment to RKO video for shooting a video supporting Measure F, and a \$5,056.29 payment to McNally Temple & Associates to pay its sub-vendors for printing labels, mailing materials, postage and shipping costs for video tapes supporting Measure F. The text of the video tape expressly urged the viewer to vote for Measure F.

Those payments, which totaled \$6,056.29, qualified as late independent expenditures since they were in excess of \$1,000, were made during the late reporting period prior to the November 3, 1998 election, and expressly supported the passage of Measure F.

By failing to timely file a late independent expenditure report within 24 hours of making late independent expenditures of \$1,000 or more during the late reporting period, Respondents violated Section 84204, subdivision (a).

Count 6: Respondents David Rosenaur and Export International, Inc. failed to file a late independent expenditure report, disclosing approximately \$1,005.91 in late independent expenditures made on or about October 30, 1998 in support of Measure F, by the October 31, 1998 due date, in violation of Section 84204, subdivision (a).

Under Section 84204, subdivision (a), Respondents were required to file a late independent expenditure report within 24 hours of making an independent expenditure in the amount of \$1,000 or more during the late reporting period. The late reporting period for the November 3, 1998 general election was October 18, 1998 through November 2, 1998.

Respondents made a \$1,005.91 payment to McNally Temple & Associates on October 30, 1998, to pay its sub-vendors for an ID phone bank supporting Measure F.

That payment, of \$1,005.91, qualified as a late independent expenditure since it was in excess of \$1,000, was made during the late reporting period prior to the November 3, 1998 election, and expressly supported the passage of Measure F.

By failing to timely file a late independent expenditure report within 24 hours of making a late independent expenditure of \$1,000 or more during the late reporting period, Respondents violated Section 84204, subdivision (a).

Count 7: Respondents David Rosenaur and Export International, Inc. failed to file a semi-annual campaign statement for the reporting period October 18, 1998 to December 31, 1998 by the January 31, 1999 due date, in violation of Section 84200, subdivision (b).

Under Section 84200, subdivision (b), Respondents were required to file a semi-annual campaign statement by January 31, 1999, for the reporting period October 18, 1998 through December 31, 1998, if Respondents made independent expenditures during the six-month period ending December 31, 1998.

Respondents filed a semi-annual campaign statement for the reporting period October 18, 1998 through December 31, 1998, on March 13, 2001, disclosing the expenditures they made, totaling \$29,864.14, during the reporting period. The semi-annual campaign statement also reflected that Respondents spent a total of \$133,599.07 to support the qualification and passage of Measure F in calendar year 1998.

By failing to file a semi-annual campaign statement for the period October 18, 1998 through December 31, 1998, by the January 31, 1999 due date, Respondents violated Section 84200, subdivision (b).

Count 8: Respondents David Rosenaur and Export International, Inc. failed to file a supplemental independent expenditure report, disclosing approximately \$9,673.62 in independent expenditures made in support of Measure F during the reporting period October 18, 1998 through December 31, 1998, by the January 31, 1999 due date, in violation of Section 84203.5.

As an independent expenditure committee that supported a measure being voted on in only one city, Respondents were required, under Section 84203.5, to file a supplemental independent expenditure report at the same time and place that it would be required to file a semi-annual campaign statement, if Respondents made independent expenditures of \$500 or more during the reporting period. The deadline to file the supplemental independent expenditure report, for the reporting period October 17, 1998 through December 31, 1998, was January 31, 1999.

Respondents filed a semi-annual campaign statement for the reporting period October 18, 1998 through December 31, 1999, on March 13, 2001, disclosing the independent expenditures that they made, totaling approximately \$9,673.62, during the period covered by the statement. Respondents were therefore required to file a supplemental independent expenditure report for the reporting period October 18, 1998 through December 31, 1998, by January 31, 1999, which Respondents failed to do.

By failing to file a supplemental independent expenditure report for the October 18, 1998 through December 31, 1998 reporting period, by the January 31, 1999 due date, Respondents violated Section 84203.5.

CONCLUSION

Respondents' filing violations are aggravated by the fact that Respondent Rosenaur conducted his campaign activities under a committee name while filing his campaign statements under his own name. As such, there was no obvious connection between Respondent Rosenaur, the individual that filed the campaign statements, and the Loomis Citizens Committee for Measure F.

Respondents' violations are mitigated by the fact that Respondents' pre-election statements, while late, were filed prior to the date of the election, and provided full disclosure of Respondent Rosenaur's campaign activities. As such, the information was available to the public, which ultimately defeated the measure.

This matter consists of eight counts, which carry a maximum possible administrative penalty of \$2,000 for each count, for a total of \$16,000. However, since 1996, the typical stipulated administrative penalty imposed for the late filing of a pre-election campaign statement or report has been \$1,500 to \$2,000 per violation, depending in part upon whether the statement or report was filed before the election, and for the late filing of a post-election campaign statement or report has been \$1,000 to \$1,500. As the filing violations did not result in significant public harm, and Respondent Rosenaur has no prior enforcement history, an administrative penalty approximating the standard range is appropriate.

Accordingly, the facts of this case, and the mitigating and aggravating circumstances addressed herein, justify imposition of a total administrative penalty of Eleven Thousand Dollars (\$11,000).